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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,078	12/14/2000	Catherine E. Salerno	PPC-770	8250

7590

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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 02/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/737,078

Applicant(s)

SALERNO ET AL.

Examiner

Karin M. Reichle

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MF

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 November 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 02 December 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 13. 6) ☐ Other:

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114.

Applicant's submission filed on 11-08-02 has been entered.

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

3. The declaration filed 3-30-01 is objected to because the serial number of the parent application listed therein is incorrect, i.e. 08/108,483 should be 09/108,483.

4. The formal drawings filed 12-02-02 have been approved by the Examiner. Note discussion of Figures *infra*

5. The drawings are objected to because in Figure 11c and 17b the cavity 36 should be denoted to be consistent with the description. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The disclosure is objected to because of the following informalities: The claims require cuffs including an inner layer comprising a strip of high loft material and an outer layer

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substantially covering the inner layer. On page 16, first paragraph, "high loft material" is defined as materials which provide a total thickness of the cuff of at least 25 mils". The paragraph goes on to say that the exact thickness of the high loft material or the outer is not critical provided the total thickness of the cuff is at least 25 mils. Therefore while it is clear that the invention contemplates a cuff having a thickness of 25 mils despite the layers which make it up, it is unclear what is considered the "thickness of the cuff"? For example where is such denoted?

Furthermore, if the thickness of the individual layers of the cuff are not critical including that of the high loft material when the high loft material is not the only layer as it is now claimed, the definition of the term "high loft material" as set forth on lines 5-7 of the paragraph on page 16 is unclear because it doesn't provide the total thickness of the cuff and is inconsistent with lines 7-10 of the same paragraph which disclose the same definition for all the layers even those which are not high loft materials. What is a "high loft material"? On page 12, line 24, after "VT", --without the transfer layer being shown-- should be inserted. The same language would be inserted after "use" on line 27. On page 13, line 9, before "embodiments", --other-- should be inserted. On line 12, "a" should be deleted. On page 14, line 1, after "views", --of-- should be inserted. On line 11, "shown in Figure 14" should be deleted. On page 24, line 22, after "longitudinal", --or lateral-- should be inserted. On page 28, the last paragraph, line 2 thereof, "2" should be --8--. On page 32, last paragraph, line 7 thereof, "9" should be --10-- and "10" should be --9--. On line 9 thereof, "portion" should be deleted. On page 35, lines 3 and 24, "11" should be --11(a)-11(d)--. On line 4, "30" should be --1--. On page 36, line 7, "Figure 11" should be --Figures 11(a)-(d)--.

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On line 18, delete "41". On page 39, line 8, delete "25', 25'". On line 18, before "strip", insert -- in the form of a-- and delete "15". On page 40, line 11, delete "43". On page 41, line 14, "Figure 17" should be --Figures 17(a)-(c)--. On page 44, line 2, "17" should be --17(a)-(c)--.

Appropriate correction is required.

7. It is noted that the dependency of claim 6 was changed in red ink from 12 to 1 to correct the obvious typographical error.

8. For purposes of the prior art rejections, the claim term "high loft material", as best understood, is interpreted as a material which in combination with the other materials of the cuff provide a cuff having a dimension of 25 mils. The term "fluid permeable" as also set forth in the last paragraph on page 16 is interpreted as "having void spaces which are capable of holding or retaining fluid". The term "fluid repellant" as set forth on page 20, lines 4-6 is interpreted as "retaining little or no fluid in its structure to provide a relatively dry surface next to the skin".

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Fell et al.

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See Figures, col. 5, lines 52-57, and elements 60, col. 9, line 37-col. 10, line 6, i.e. the internal structure 62 is resilient, can be absorbent, i.e. open to enable holding and retaining of fluids or fluid permeable, greater than 25 mils in thickness, i.e. high loft, and layer 64, col. 1, line 7-col. 11, line 32, i.e. the outer layer is flexible, hydrophobic, i.e. fluid repellant, porous, i.e. liquid permeable, can be films or nonwoven webs. With regard to claim the structure 62 may comprise polyester, see col. 9, lines 59-61 and thus col. 4, lines 64-66 of Sivess. In regard to claims 5-6, the cover 64 is rolled or folded over on or over the flange as seen in Figures 3 and 6 to form a cavity at the distal end of the cuff which is at least partially filled with element 62. Also see col. 9, lines 47-49.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al in view of McNeil '488.

Applicants claim an absorbent core in which the center part is thicker than the end parts and the center part including moss while Fell et al teaches an hour glass shape, see col. 8, lines 41-48, and the absorbent including materials adapted to retain and absorb fluid, see col. 4, lines 58-65 and col. 6, lines 31-53, but not moss or a thicker center. However see McNeil, col. 1, lines 3-6, col. 6, lines 29-31 and 34-41 and Figures 4-5, i.e various cross sections show thickness decreasing from center. To employ an absorbent core including moss as taught by McNeil on the Fell et al device would be obvious to one of ordinary skill in the art in view of the recognition that such a is a well known absorbent material and the desire of Fell et al to employ absorbent materials. To employ a thicker center part as taught by McNeil on the Fell et al device would also have been obvious to one of ordinary skill in the art in view of the recognition that such position is that of fluid impact and more absorbent at this position would better absorb such impact and the desire of Fell et al to absorb and retain fluids.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Buell teaches a liquid permeable cuff. Gryskiewicz also teaches a multiple layer cuff. Gessner teaches a high loft material which can be used as a component of a diaper or napkin. McCoy '337 at the Examples teaches edges members which include the disclosed high loft materials as an interior layer, exterior layer or both. Since the inventor is also an inventor in the

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instant case Applicant might want to submit a statement of common ownership as set forth in MPEP 706.02(l)(2) to preclude application of this reference at a later time.

12. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617.

*K. M. Reichle*  
KIM REICHL  
PATENT EXAMINER

KMR

February 11, 2003